

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FERDINAND RIVERA and CRISTINA  
RIVERA,

Plaintiffs,

v.

ONEWEST BANK, FSB,

Defendant.

No. C 10-04538 WHA

**ORDER REGARDING MOTION  
TO DISMISS AND MOTION TO  
REMAND SUBMISSIONS AND  
CONTINUING HEARING ON  
DECEMBER 9, 2010**


This action having been reassigned to the undersigned, defendant MortgageIt Inc. noticed a motion to dismiss for December 16, 2010 (Dkt. No. 14). Defendant OneWest Bank, FSB filed a joinder to the motion (Dkt. No. 17). No other defendants have been served. Meanwhile, plaintiffs noticed a motion to remand for a hearing on December 9, 2010 (Dkt. No. 19). Plaintiffs dismissed MortgageIt Inc. from the action on November 17, 2010 (Dkt. No. 20), and on November 19, 2010, MortgageIt Inc. filed a notice of withdrawal of its motion to dismiss (Dkt. No. 21). Meanwhile, defendant OneWest Bank, FSB did not file an opposition or statement of nonopposition to plaintiffs' motion to remand, which was due on November 18, 2010, pursuant to Civil Local Rule 7-3.

With regard to the motion to dismiss, because the moving party has withdrawn the motion and been withdrawn from the case, the Court is concerned that the moving submissions do not clearly apply to the joining defendant, OneWest Bank, FSB. In order to cure this gap, the joining defendant may have until **NOVEMBER 29, 2010, AT 5:00 P.M.**, to update its moving submission in

1 support of the motion to dismiss, stating in particular what portions thereof still apply to it. Then  
2 the following dates shall apply with regard to both the motion to dismiss and motion to remand.  
3 Each side may oppose the other's motion by **DECEMBER 3, 2010, AT 5:00 P.M.** Each side may file  
4 a reply in support of its motion by **DECEMBER 8, 2010, AT 5:00 P.M.** The hearing on the motion  
5 to remand on December 9 is **CONTINUED**, and both motions will now be heard on **DECEMBER 16,**  
6 **2010, AT 8:00 A.M.**

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8 **IT IS SO ORDERED.**

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10 Dated: November 19, 2010.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE